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UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

Ex parte JASON ROBERT MCGEE, CHRISTOPHER C. MITCHELL,
MICHAEL JOHN MORTON, and BRENT A. PETERS

Appeal 2009-006186
Application 10/043,355
Technology Center 2400

Before JOHN A. JEFFERY, JAMES D. THOMAS, and
ST. JOHN COURTENAY III, *Administrative Patent Judges*.

COURTENAY, *Administrative Patent Judge*.

DECISION ON APPEAL¹

STATEMENT OF THE CASE

This is an appeal under 35 U.S.C. § 134(a) from the Examiner's final rejection of claims 1-33. We have jurisdiction under 35 U.S.C. § 6(b).

We Reverse.

¹ The two-month time period for filing an appeal or commencing a civil action, as recited in 37 C.F.R. § 1.304, or for filing a request for rehearing, as recited in 37 C.F.R. § 41.52, begins to run from the "MAIL DATE" (paper delivery mode) or the "NOTIFICATION DATE" (electronic delivery mode) shown on the PTOL-90A cover letter attached to this decision.

Invention

Appellants' invention pertains to synchronization of cookies across multiple client machines on a network. (Spec. 1). In accordance with one embodiment of Appellants' invention, when a change to a cookie at a client machine is detected, the client sends a notification to the cookie synchronization server. The notification includes sufficient information to at least identify the account to which the client machine belongs and allow the cookie synchronization server to re-create the cookie. (Spec. 8, ll. 1-4).

The cookie synchronization server stores the changed cookie information and subsequently sends it back out to each other client machine in the account. The client machines update their cookies in accordance with the received cookie change information and acknowledge receipt of the changed cookie information. Thus, the server can keep track of which client machines have the latest version of each cookie so that it can send only those cookies that the client machine does not already have to a requesting client machine. (Spec. 8, ll. 6-14).

Illustrative Claim

1. A method of synchronizing different copies of a cookie across a plurality of client computing devices that access a network, said method comprising the steps of:

(1) registering a plurality of client computing devices as members of an account, wherein at least one cookies to be synchronized across said plurality of client computing devices that are members of said account, each of said plurality of client computing devices containing a different copy of said at least one cookie;

(2) maintaining information identifying the members of said account at a server on said network;

(3) responsive to a change in a copy of said at least one cookie stored at a first one of said client computing devices that is a member of said account, said first member client computing device sending a message to said server on said network, said message containing sufficient data from which said changes to said copy of said at least one cookie can be determined and the account to which said first member client computing device corresponds;

(4) storing said data at said server;

(5) said server sending said data to other client computing devices that are members of said account; and

(6) each of said other client computing devices that is a member of said account updating its copy of said at least one cookie in accordance with said data.

The Examiner's Rejection

Claims 1-33 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over Howard (US 6,678,731 B1), Sears (US 6,934,736 B2), and Stanley A. Miller II, *Ways to Click Away Annoying Bugs*, JSONline Milwaukee Journal Sentinel, <http://www.isonline.com/bvm/tecg/news/jun01/bugs19061801.asp> (hereinafter "Miller").

ISSUE

Under § 103, did the Examiner err in finding that the combination of Howard, Sears, and Miller would have taught or suggested:

(3) *responsive to a change in a copy of said at least one cookie stored at a first one of said client computing devices that is a member of said account, said first member client computing device sending a message to said server on said network, said message containing sufficient data from which said changes to said copy of said at least one cookie can be determined and the account to which said first member client computing device corresponds[?]*

(Claim 1; *see also* the commensurate language recited in each of independent claims 16 and 24).

FINDINGS OF FACT

1. Sears teaches that a number of web sites register with a cookie server. (Col. 4, ll. 20-21).
2. Sears teaches allowing the user to change the user information in each of the cookies associated with a number of web sites by simply changing information stored at a cookie server only once. The cookie server then updates all of the corresponding cookies the server is storing. (Col. 3, ll. 1-2, 32-37).
3. Sears teaches when a client (user) subsequently navigates to a web site, the cookie server looks up user-specific information based on the cookie requirement for the web site. The cookie server then transmits the relevant information in the form of one or more cookies to the client. The client then transmits the one or more cookies to the web site so that the web site may provide a customized web page for the client. (Col. 4, ll. 27-32).

PRINCIPLES OF LAW

The allocation of burdens requires that the USPTO produce the factual basis for its rejection of an application under 35 U.S.C. §§ 102 and 103.

In re Piasecki, 745 F.2d 1468, 1472 (Fed. Cir. 1984) (citing *In re Warner*, 379 F.2d 1011, 1016 (CCPA 1967)). The one who bears the initial burden of presenting a prima facie case of unpatentability is the Examiner. *In re Oetiker*, 977 F.2d 1443, 1445 (Fed. Cir. 1992).

ANALYSIS

We decide the question of whether the Examiner's proffered combination of Howard, Sears, and Miller would have taught or suggested:

(3) *responsive to a change in a copy of said at least one cookie stored at a first one of said client computing devices that is a member of said account, said first member client computing device sending a message to said server on said network, said message containing sufficient data from which said changes to said copy of said at least one cookie can be determined and the account to which said first member client computing device corresponds.*

(Claim 1; *see also* the commensurate language recited in each of independent claims 16 and 24).

Based upon our review of the record, we agree with Appellants' contentions as articulated on page 16 of the Brief. Appellants refer specifically to the portions of the secondary Sears reference relied by the Examiner (Ans. 5) for teaching the aforementioned limitations. Appellants challenge the Examiner's findings as follows:

These portions of Sears describe the user changing the information in the appropriate data field stored at the cookie server and then the cookie server placing that data into a plurality of different cookies at the cookie server. These portions of Sears differ from the claim element in several very significant ways. Specifically, there is no cookie at the client machine that is being changed and to which the further processing is responsive, as claimed. In fact, in Sears, there are no cookies at the client machine at all. The whole point of Sears is that the client machine does not have to store cookies. Rather, the cookie server stores the data that is needed to generate data fields within cookies and, when the client machine navigates to a web site listed in the cookie server's cookie list, only then does the cookie server build the appropriate cookie(s) for that web site and send it to the client machine.

Thus, these portions of Sears do not disclose any cookie being changed at a client machine that results in a message being sent to the cookie server, as claimed.

(App. Br. 16) (underline added).

In reviewing the record, we particularly observe that the Examiner does not directly address the aforementioned arguments in the “Response to Argument” section of the Answer. (Ans. 15-16).

We agree with Appellants that the portions of the secondary Sears reference relied on by the Examiner² differ materially from Appellants’ invention as claimed. (See Independent claims 1, 16, and 24).

² The Examiner relies on Sears at column 3, lines 32-48, and column 10, line 51 through column 11, line 6. (Ans. 5).

Sears teaches that a number of web sites register with a cookie server. (FF 1). Sears also “teaches allowing the user to change the user information in each of the cookies associated with a number of web sites by simply changing the information stored at a central cookie server only once.” (FF 2). “When a client (user) subsequently navigates to a web site, the cookie server looks up user-specific information based on the cookie requirement for the web site.” (FF 3). “The cookie server then transmits the relevant information in the form of one or more cookies to the client. The client then transmits the one or more cookies to the visited web site so that the web site may provide a customized web page for the client.” (*Id.*).

Thus, we find Sears does not teach or fairly suggest *sending a message to a server containing sufficient data from which changes to a copy of at least one cookie can be determined responsive to a change in a copy of at least one cookie stored on a first client computing device.* (Claim 1).

Instead, Sears teaches that the user independently changes the user information on the cookie server. (FF 2; *see also* Sears at col. 10, ll. 23-25, 59-62). Thus, as taught by Sears, the change to the cookie information is effected by a user on the cookie server, and is not performed in response to a change of any cookie on the client side that triggers a message sent to the cookie server. (FF 1-3). Moreover, we note that each of Appellants’ independent claims require (in commensurate language) that the *message sent to the server must contain sufficient data from which changes to a copy of at least one cookie can be determined.* (Claims 1, 16, and 24). We find no such teaching or suggestion in Sears.

Because the Examiner does not establish, and we do not find, that the Howard and Miller references remedy the deficiencies of Sears, we reverse

the Examiner's rejection of each independent claim on appeal. (Claims 1, 16, and 24). Because we have reversed the Examiner's rejection of each independent claim, we also reverse the Examiner's rejection of each dependent claim on appeal.

CONCLUSION OF LAW

Appellants have shown the Examiner erred in finding that the combination of Howard, Sears, and Miller would have taught or suggested:

(3) *responsive to a change in a copy of said at least one cookie stored at a first one of said client computing devices that is a member of said account, said first member client computing device sending a message to said server on said network, said message containing sufficient data from which said changes to said copy of said at least one cookie can be determined and the account to which said first member client computing device corresponds.*

(Claim 1; *see also* the commensurate language recited in each of independent claims 16 and 24).

DECISION

We reverse the Examiner's rejection of claims 1-33 under 35 U.S.C. § 103(a).

REVERSED

Appeal 2009-006186
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